BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of: Numbering Resource Optimization	CC Docket No. 99-200

PETITION OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA FOR WAIVER OF THE FEDERAL COMMUNICATION COMMISSION'S CONTAMINATION THRESHOLD RULE

I. INTRODUCTION

Pursuant to Section 1.3 of the Federal Communications Commission (FCC or Commission) rules, the California Public Utilities Commission and the People of the State of California (CPUC or California), respectfully submit to the Federal Communications Commission this petition for waiver of the Commission's contamination threshold rule. The FCC's rule requires carriers to donate thousand-blocks with up to a 10 percent contamination threshold to a number pool within a rate center as discussed in the NANC Report and the INC Thousand Block Pooling Guidelines, and in the Commission's March 31, 2000 Report and Order, and Further Notice of Proposed Rulemaking (First NRO Order).[1]

Specifically, the CPUC requests that the Commission grant a waiver of this rule so as to authorize California the discretion to apply an increased contamination threshold of 25 percent. This request is based on studies CPUC staff have performed, which indicate that, by increasing the contamination threshold, California can retrieve from carriers currently holding blocks of numbers, a larger quantity of numbers on average. Those thousand-number

[1] Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, FCC 00-101, (rel. March 31, 2000) (*First NRO Order*); NANC Report at §5.7.3; see also Thousand Block Pooling Guidelines at §§ 4.1, 8.2.4-8.2.8.

blocks, in turn, can be donated to active number pools, and will maximize the amount of available numbering resources in areas where number pooling has been implemented, and promote the Commission's goal of more efficient number allocation and usage.

II. CALIFORNIA HAS MET ITS BURDEN UNDER §1.3

Pursuant to 47 C.F.R §1.3, the Commission may exercise its discretion to waive a rule if "good cause" exists. The standard for "good cause" requires a showing that the waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.[2] The CPUC maintains that the uniqueness of California's numbering situation along with the fact that increasing the contamination threshold will augment the quantity of numbers that are returned to the pool, constitute "good cause" under §1.3, and as such, justify a waiver of the 10 percent contamination rule.

California's severe shortage of available numbers to meet growing customer needs also constitutes special circumstances warranting a deviation from the 10 percent contamination rule. Thousand-blocks number pooling is the CPUC's highest priority for achieving a long-term solution to the current numbering crisis facing California. Further, the 10 percent threshold is unnecessarily low for California and does not serve the public interest. Public interest would be best served by raising the contamination threshold to 25 percent since additional numbering resources could be returned and reallocated to carriers demonstrating a need for these resources, thus maximizing the availability of already scarce numbering resources. By increasing the threshold, California avoids wasting remaining numbers in each NPA, and ensures greater control over the quantity of numbers the block holder retains.

A 25 percent contamination threshold also works towards California's goal of more closely aligning the quantity of numbers retained by carriers with the

[2] *Northeast Cellular Telephone Company v. FCC* (1990) 283 U.S. App. D.C. 142; 897 F.2d 1164; 1990 U.S. App. LEXIS 3435; citing *Wait Radio v. FCC*, 135 U.S. App. D.C. 317, 418 F.2d 1153, 1159.

carrier's actual needs. Public interest would be further served by reducing the quantity of numbers retrieved by carriers while still providing carriers with the numbering resources they actually need, and simultaneously delaying number exhaust. A waiver is also justifiable since the CPUC's proposed deviation from the 10 percent contamination threshold does not undermine the public policy served by the current rule. California does not dispute that the ten percent contamination generally has been effective, but believes that circumstances particular to California, based on the staff study, warrant deviating from the rule. In fact, California's proposal furthers the original purpose of the rule by retrieving additional numbering resources and returning them to the pool for carrier use, both of which are goals currently sought under the present threshold amount.

III. WAIVER REQUEST

As set forth in the First NRO Order, both the NANC Report and the INC Number Pooling Report recommended that carriers donate thousand-blocks with up to a 10 percent threshold contamination level to a pool within a rate center.[3] The right to retain a block depends on how "contaminated" that block is. A contaminated block of numbers, in relation to thousand-block number pooling, refers to a block of 1,000 numbers, in which at least one telephone number already has been assigned to a customer by the carrier holding the block. That one number, thus, is not "available" for assignment to another customer.[4] Under the existing rule, if a thousand-block is more than 10 percent contaminated, that is, at least 101 numbers in the block have been assigned to customers, the carrier can retain the block and not donate it to the number pool.

In the First NRO Order, the FCC adopted a uniform contamination threshold for all carriers, and declined to apply different contamination thresholds for different carriers because of the potential competitive impact of such

[3] *First NRO Order* at ¶190, footnote 459 citing NANC Report at §5.7.3; Thousand Block Pooling Guidelines at §§ 4.1, 8.2.4-8.2.8.
[4] First NRO Order at ¶190.

treatment.[5] The Commission further found that the donation of thousand-blocks with up to a 10 percent contamination threshold posed the potential to add significant numbering resources in areas where thousand-blocks number pooling has been implemented.

We emphasize that, to date, the CPUC has not opposed the FCC's contamination rule, although the CPUC has argued in this docket for the FCC to adopt a higher contamination threshold. Nor should California's current proposal be construed as an attempt to undermine the public policy served by the current threshold. The CPUC has generally supported the recommendation that the same contamination threshold apply to all industry segments.[6] However, the CPUC has consistently maintained that individual state commissions, not carriers, should have the flexibility to increase the threshold depending on circumstances particular to the state, or the particular utilization patterns of a carrier.[7] We also believe that allowing state commissions' flexibility in applying the federal rules will ensure that the public interest in efficient use of this public resource will be effectively protected.

In support of its position to increase the contamination threshold, California initiated a study to identify the number of thousand-blocks contaminated between the existing 10 percent threshold and California's proposed 25 percent threshold. (See attached Contamination Study).[8] The study shows that by increasing the contamination threshold from 10 percent (100 numbers) to 25 percent (250 numbers), California can retrieve a significantly higher quantity of numbers on average, which in turn, could be returned to the pool. For example, California could require donations of more than 350 additional blocks each in the 559, 562, and 760 NPAs. Even in NPAs where demand is greatest, such as in 310 and 909,

[5] Fist NRO Order at ¶191.
[6] Comments of California, CC Docket No. 99-200, p. 35, (dated July 30, 1999).
[7] Comments of California at p.35.
[8] This chart reflects information gathered as of December 31, 2001. Updated NRUF information will not be available until September 2002. The CPUC will provide the FCC with an updated study once the new NRUF data has been received and analyzed.

California could gain 250 and 302 thousand-blocks for those two NPAs, respectively. As the CPUC staff study shows, almost 7,000 more blocks could be placed in pools in California if the CPUC can tap blocks contaminated between 10 percent and 25 percent. As stated in the chart, approximately 5.2 million to 6.2 million numbers can potentially be returned to the pool if the contamination threshold is raised to the proposed 25 percent.

In addition, the rollout of the NPAC Release 3.1 software was completed on June 24, 2002, allowing the National Pooling Administrator to port greater volumes of numbers than was possible using the older, less efficient Release 1.4 pooling software. Increasing the contamination level from 10 percent to 25 percent is now technically possible with the higher efficiencies produced with the new software.

The overall effect of increasing the threshold would be to cause carriers to donate a significantly higher percentage of limited numbering resources to the pool. This would notably assist in California's efforts to achieve the most efficient and effective use of finite numbering resources, and ultimately would help delay NANP exhaust and expansion. The CPUC has repeatedly maintained that the FCC should not assume that carriers will obtain only the quantity of resources actually needed, and return any they do not utilize. By increasing the contamination threshold to 25 percent, California can ensure that a carrier will keep a full thousand-block only when a carrier is using more than 250 numbers, as opposed to retaining a full-thousand block when the carrier utilizes only 100 or more numbers. If the carrier uses less than the 25 percent threshold, the remaining numbers will be returned to the pool, and will be available for reallocation.

Furthermore, thousand-blocks number pooling is, and has been, the CPUC's highest priority for finding a long-term solution to the numbering crisis in California. A waiver from the current 10 percent contamination rule would dramatically slow the pace at which numbering resources in California are

depleted. Accordingly, we believe that a waiver would be justified to allow California the flexibility it needs to respond to local conditions with respect to its numbering situation.

IV. CONCLUSION

For the reasons stated, the CPUC believes that the number crisis within California, as well as the benefit to the public interest served by increasing the quantity of numbers retrieved and retuned to the pool, justify "good cause" for the Commission to grant the CPUC a waiver of the 10 percent Contamination Rule, and enable California to increase the threshold to 25 percent. We urge the FCC to grant the CPUC the requested waiver to implement the 25 percent contamination threshold so California can maximize the quantity of number resources that can be returned and reallocated, and as such, gain greater control over the rate at which California's numbering resources are presently being exhausted, and further the Commission's goal of more efficient number allocation and usage.

Respectfully submitted,

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ATTACHMENT

Blocks Contaminated Over 10% to 25%
Data As Of December 31, 2001

	NPA	Wireline	Cellular/PCS	Total Blocks	Numbers Minimum	Numbers Maximum
1	**209**	169	62	231	173,250	205,590
2	**213**	190	71	261	195,750	232,290
3	**310**	244	6	250	187,500	222,500
4	**323**	292	8	300	225,000	267,000
5	**408**	192	45	237	177,750	210,930
6	**415**	259	33	292	219,000	259,880
7	**510**	282	84	366	274,500	325,740
8	**530**	240	68	308	231,000	274,120
9	**559**	294	73	367	275,250	326,630
10	**562**	329	48	377	282,750	335,530
11	**619**	129	109	238	178,500	211,820
12	**626**	255	37	292	219,000	259,880
13	**650**	291	29	320	240,000	284,800
14	**661**	213	30	243	182,250	216,270
15	**707**	259	73	332	249,000	295,480
16	**714**	229	9	238	178,500	211,820
17	**760**	298	57	355	266,250	315,950
18	**805**	239	98	337	252,750	299,930
19	**818**	212	12	224	168,000	199,360
20	**831**	123	42	165	123,750	146,850
21	**858**	145	11	156	117,000	138,840
22	**909**	298	4	302	226,500	268,780
23	**916**	230	37	267	200,250	237,630
24	**925**	279	29	308	231,000	274,120
25	**949**	182	14	196	147,000	174,440
Totals		**5,873**	**1,089**	**6,962**	**5,221,500**	**6,196,180**